

The Hotel Operators' Occupation Tax Act imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel at the rate of 5% of 94% of the gross rental receipts from such renting, leasing or letting. See 35 ILCS 145/3. (This is a GIL.)

December 15, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter dated October 8, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY requests updated rulings on our business services. We are making this request due to the time that has lapsed since receiving the prior ruling and because of an expansion in our service offerings. Please advise whether the following services are subject to Sales and/or Use Tax and, if so, who is responsible for remitting the tax to the state (COMPANY or the Hotel).

Pay Per View

COMPANY provides to the hotel's guests, a pay-per-view entertainment service on television sets in hotel rooms (PPV Service).

The PPV Service is provided by means of a PPV System in the hotel, consisting of a central control unit linked by wire to the television sets in the hotel rooms. The control unit contains a rack of video cassette players (VCPs) or Digital File Servers, a computer and other electronic equipment. The hotel provides space for the installation of the PPV system, which is owned, installed and maintained by COMPANY, and is solely under the control of COMPANY.

The guest selects a movie from a menu of available titles appearing on the television screen. When the guest selects a video program on the television set's remote control, a specific VCP in the PPV System control unit is electronically accessed and begins to run the tape of the movie. In some smaller hotels the PPV System is accessed by telephone through a PBX system (Video Now) rather than by remote control.

The agreement between COMPANY and the operator of the hotel provides that, based upon daily information reported by the monitoring unit on

the PPV System, the hotel, on behalf of COMPANY, is to place a specified charge on the guest's hotel bill for each movie viewed. The hotel retains a specified percentage of each charge (commission) less any adjustments (denials) and remits the remainder to COMPANY monthly.

Free to Guest Service

COMPANY may provide various channels of television programming (e.g., ESPN, TBS, USA, HBO and CNN) that are delivered to the hotel by satellite or cable and are provided free to the hotel guests. The hotel generally pays a specified monthly rate per room for this service.

Video Game Service

COMPANY may provide a selection of video games for use by the hotel guests. The games would be accessed via a game controller in the hotel room and provided in a manner similar to the PPV Service, except that CD-ROM game players are used as the source of the games.

Internet Service

COMPANY may provide two kinds of Internet Services:

1. TV - Centric Internet Access

Guest in the room selects internet access using a remote control, launching a TV based internet browser (common to WebTV). The guest is connected to the internet at high speeds, and uses a wireless infrared keyboard. The actual PC being used by the guest is located in the control unit rack, not in the guest room. Communication between the guest and the control unit rack is provided via the same wire as the PPV video services. Billing may be per day, per minute, per hour, or any other time period.

2. Laptop Connectivity

Provides high-speed internet connectivity to guests with laptop PCs. The laptop is connected to a port in the room, and the guest is automatically connected to the high-speed network. The guest uses his or her own internet browser. Billing is based on time periods (as above).

Special Events Service

COMPANY may in the future provide live, time delayed, simulcast or rebroadcast of special PPV events (e.g., sports, wrestling, concerts). These events would be delivered live via satellite or replayed using our PPV System.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. See 35 ILCS 120/2. The Service Occupation Tax Act imposes a tax upon persons engaged in the business of making sales of service (referred to as "servicemen") on all tangible personal property transferred as an incident of a sale of service. See 35 ILCS 115/3 et

seq. If there is no transfer of tangible personal property, the fees that hotels charge their guests for in-room movies and other such services would not be subject to sales tax.

However, the receipts charged by hotels as a result of their provision of in-room movies are generally subject to the Hotel Operators' Occupation Tax Act. See 35 ILCS 145/1 et seq. The Hotel Operators' Occupation Tax Act imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel at the rate of 5% of 94% of the gross rental receipts from such renting, leasing or letting. See 35 ILCS 145/3. It is the Department's position that in-room movies provided by hotel operators constitute "services" or "accommodations accompanying the use and possession of the room" that are subject to tax. The same would apply to similar services such as computer ports and satellite and cable television. However, the Department is aware that there may exist situations in which third party video companies, as opposed to the hotel operators, provide in-room movies and other similar services directly to hotel guests. In situations where the Department finds that third party video companies, rather than the hotel operators, are actually providing the in-room movies directly to the hotel guests, the Hotel Operators' Occupation Tax Act would not apply.

In regards to the Internet access, please note that the Telecommunications Excise Tax Act imposes a tax on the act or privilege of originating or receiving intrastate or interstate telecommunications by persons in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers by such persons, 35 ILCS 630/3 and 4. The Act defines gross charges as including amounts paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by retailers, 35 ILCS 630/2(a).

The taxability of charges for Internet access or usage is fact specific. Section 2(c) of the Telecommunications Excise Tax Act defines "telecommunications" and states that this term does not include "value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission." For example, the charges for computer data, protocol conversions which permit computers to exchange data, no matter which languages or protocols a computer's output may be in, and packet-switching, which groups data into packets for efficiency of transmission, would be exempt. See 86 Ill. Adm. Code 495.100(d).

Persons that provide customers access to the Internet and who do not, as part of that service, charge customers for the line or other transmission charges which are used to obtain access to the Internet, are not considered to be telecommunications retailers for providing such access. However, if fees for Internet access or usage include a component for line charges, such fees will be subject to the tax and providers will have to register as telecommunications retailers. If retailers charge for the transmission of data, as well as for the data itself, Section 495.100(c) of the Telecommunications Excise Tax regulations provides that charges for the data processing or inquiry would not be subject to tax, but charges for transmission of the data would be taxable, so long as the charges for each is disaggregated and separately identified in the books and records of the retailer. If these charges for transmission and data services are not thus disaggregated, the entire charge is taxable as a sale of telecommunications.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.